

other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) A Shipper's Export Declaration (SED), required under §123.22(c) of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate District Director of Customs or Department of Defense transmittal authority. A copy of the SED and the written certification statement shall be provided to the Office of Defense Trade Controls immediately following the export.

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the permanent or temporary export without a license of any unclassified equipment or unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or temporary import of Canadian-origin items from Canada for end-use in the United States or return to Canada for a Canadian citizen, with the exception of the defense articles, defense services and related technical data listed in paragraphs (b), (c), and (d) of this section.

(b) The exemption provided in paragraph (a) of this section does not apply to the following ITAR part 121, §121.1 defense articles, defense services, or related technical data:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I;

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by part 125 of this subchapter.)

(4) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(5) Naval nuclear propulsion equipment listed in Category VI(e);

(6) Aircraft Listed in Category VIII(a);

(7) Category XIII (b) (e.g. military information security systems, cryptographic devices, software, and components) and XIII (j) (e.g. stealth);

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d);

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c);

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI;

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII;

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(13) All USML items and related technical data on the Missile Technology Control Regime (MTCR) Annex.

(c) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian citizen.

(d) Any defense service covered by part 124 of this subchapter.

(e) Any export involving defenses articles and defense services for which congressional notification is required in accordance with §123.15 and 124.11 of this subchapter.

(f) *Related requirements.* The exemption provided in this section from requiring a license for export does not exempt the exporter from the following:

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(1) Registration as an exporter as required by the Arms Export Control Act and part 122 of this subchapter;

(2) The exporter, or any party to the transaction must be eligible as described in § 120.1 (c) and (d) of this subchapter;

(3) The requirement for filing a Shippers' Export Declaration or notification letter required by § 123.22 of this subchapter;

(4) Written documentation that the defense article is:

(i) For end-use in Canada by a Canadian citizen, and

(ii) For use by non-Canadians, in Canada, or export from Canada to another foreign destination, requires prior written approval of the US Government;

(5) Obtaining a completed DSP-83 for all significant military equipment;

(6) Maintenance of records as required by § 122.5 of this subchapter.

NOTE: It is the responsibility of the exporter of record to determine in writing the Canadian end-use and end-user. In any instance when such written documentation is not available, this exemption may not be used. Further, in any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use by a non-Canadian citizen or for export to another foreign destination, other than the United States, an export license must be obtained prior to the transfer to Canada. The request should state the ultimate foreign end-user and end-use with Canada as an intermediate destination. The role of the Canadian parties should be defined. Should an instance exist when a defense article or related technical data was properly exported, either using a license or an exemption, and there is a reason to change either the end-use or the end-user, the requirements of § 123.9 of this subchapter apply.

[64 FR 17534, Apr. 12, 1999]

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the permanent or temporary export or temporary import without a license of any unclassified equipment or unclassified technical data to Canada for end use in Canada by Canadian citizens or return to the United States, or from Canada for end use in the United States or return to a Canadian citizen in Canada, with the exception of the defense arti-

cles, defense services or related technical data.

(b) *Exceptions.* The exemptions of this section do not apply to the following defense articles, defense services, or related technical data:

(1) Fully automatic firearms and components and parts therefor in Category I(a) which are not for end use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian.

(c) *Related requirements.* The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.15 of this subchapter or from filing the Shipper's Export Declaration or notification letter required by § 123.22 of this subchapter.

(d) *Part 124 agreements.* The requirements of part 124 of this subchapter must be complied with in the situations contemplated in that part. For example, the exemptions of this section may not be used for the provision of defense services except pursuant to an approved manufacturing license agreement or technical assistance agreement.

[59 FR 29951, June 10, 1994]

§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.

(a) A license from the Office of Defense Trade Controls is not required if:

(1)(i) The article or technical data to be exported was sold, leased, or loaned